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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Richard Gore

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10/17/2006

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EXAMINER

DIVECHA, KAMAL B

ART UNIT

PAPER NUMBER

2151

DATE MAILED: 10/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/007,164

Applicant(s)

GORE ET AL.

Examiner

KAMAL B. DIVECHA

Art Unit

2151

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 August 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

*Response to Arguments*

Claims 1-16 are pending in this application.

Applicant's arguments filed August 2, 2006 have been fully considered but they are not persuasive.

In response filed, applicant argues in substance that:

- a. Deverill fails to disclose determining application test latency, wherein said application test latency is selected to represent a portion of said electronic commerce transaction, as claimed (remarks, page 12).

In response to argument [a], Examiner disagrees in light of following reasons:

Claim 1 as amended recites:

A method for monitoring electronic commerce transactions, said method comprising the computer-implemented steps of:  
determining network transport latency;  
determining application test latency, wherein said application test is selected to represent a portion of said electronic commerce transactions; and  
indicating said network transport latency and said application test latency on a display.

First, the claim as amended is indefinite because it's unclear whether the applicant is attempting claim the "application test" feature or the "application test latency" feature (see 35 U.S.C. 112, second paragraph rejection presented below).

Secondly, the claims as amended fails to comply with the enablement requirement (see 35 U.S.C. 112, first paragraph rejection presented below). Applicant in response filed, directed to page 21, line 4-16 of the specification, for the support of these amendments, however, the directed specification recites:

“In one embodiment, application tests are requests that operate to request data, in the form of web pages that are formatted in hypertext transfer protocol (HTTP). Application tests are chosen to mimic, as closely as possible, the full range of a customer's interaction with the electronic commerce provider. These application tests are operable for Logon, getting an initial web page, creating an order, getting another page, selecting and configuring representative items, getting another page, etc., until a final page is received that represents a finished business transaction. For instance, the application test might generate an order, select and configure items to be purchased (e.g., four routers), submit the order and then check on the order status. In the present embodiment, sufficiently granular application tests are created to represent significant steps of a customer transaction while still being lightweight enough to minimize impact on actual ecommerce applications”.

There is simply no teaching, suggestion or support for the amended claimed limitation. At best, the specification suggests that the tests are applied and/or the latency is determined for various components or of an application.

There is simply no teaching of the fact wherein application test is selected to represent a portion of said e-commerce transaction.

For examination purposes the amended claimed limitation will be interpreted as: determining application test latency (i.e. determining application latency), wherein said application test latency is selected to represent a portion of said electronic commerce transactions (i.e. latency is determined for various components of an application).

Based on the interpretation above, Deverill clearly teaches the process of determining the latency and/or delay of an application, specifically, e-commerce application. Deverill further

Art Unit: 2151

teaches the process of determining the latency for plurality of components associated within the application.

Deverill explicitly teaches measuring the response time of the transaction event such as a request, response, a retrieve function, a store function, etc. (pg. 2 [0011], [0012], [0014], pg. 4 [0038] to pg. 5 [0057]). These functions are components of an application, specifically a securities trade application.

This teaching is similar to the above cited portion of the applicant specification, which determines the latency for various components such as logon event, getting an initial web page, creating an order, getting another page, selecting and configuring representative items, getting another page, etc.

Furthermore, It is evident from the detailed mappings found in the rejection(s) below Deverill et al. disclosed this functionality (i.e. determining an application test latency for various components of an application). Further, it is clear from the numerous teachings (previously and currently cited) that the provision for claimed limitation was widely implemented in the networking art. Thus, Applicant's arguments drawn toward distinction of the claimed invention and the prior art teachings on this point are not considered persuasive.

b. Nowhere does Deverill teach or suggest determining application test latency, as claimed (remarks, page 12).

In response to argument [b], Examiner disagrees for the same reasons as set forth in response to argument [a] (see response to argument [a]).

Art Unit: 2151

c. Rakoshitz also does not disclose determining application test latency, wherein said application test latency is selected to represent a portion of said electronic commerce transactions, as claimed (remarks, page 13).

In response to argument [c], Examiner agrees because the limitation has been disclosed by Deverill as set forth in response to argument [a] (see response to argument a).

d. One having ordinary skill in the art would not be motivated to combine these references. Applicants respectfully submit that the rejection is using impermissible hindsight, by utilizing the language of the claim as a blueprint to collect references and then device a motivation for combining them, where no suggestion or motivation exists in the references cited (remarks, page 13).

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

Art Unit: 2151

generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

Claims 1, 13 and 20 stands rejected as follows:

As per claim 1, 13, 20, Deverill teaches a computer system comprising:

- a bus (Figs.1-9; shows computer systems, it is implicit that there is a bus because a bus is an essential element in order for a computer to operate);

- a processor coupled to said bus (Figs.1-9; shows computer systems, it is implicit that there is a processor coupled to a bus because a processor coupled to a bus is an essential element in order for a computer to operate);and

- a memory unit coupled to said bus, said processor for executing a method for monitoring electronic commerce transactions (Figs.1-9; shows computer systems, it is implicit that there is a memory unit coupled to a bus for executing an operation because a memory unit coupled to a bus is an essential element in order for a computer to operate), said method comprising the steps of:

- determining application test latency (i.e. application latency), wherein application latency is determined for plurality of portions of electronic commerce transaction (Abstract, paragraph 0014; Deverill teaches that individual tasks can be tagged and time and can be evaluated to produce desired latency and/or summary data ); and indicating said application test latency on a display(Fig.7; explicitly shows latency with respect to time).

Deverill however does not teach determining network transport latency; and indicating said network transport latency on a display.

Art Unit: 2151

Rakoshitz teaches network transport latency (Figs. 1-15, col.5, lines 3-15); and indicating said network transport latency on a display (Figs. 1-15, col.5, lines 3-15).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Deverill to include network transport latency as taught by Rakoshitz in order to determine the delay of packet from a source to a destination (Rakoshitz, col.5, lines 3-15).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Deverill and Rakoshitz in order to provide a system to measure the latency of an application and to measure the delay of transmitting a packet **(Deverill, Figs.1-9, Rakoshitz, col.5, lines 3-15).**

In this case, the motivation to combine has been clearly recited in the references themselves, i.e. it would have provided a system to measure the delay in transmitting a packet by measuring the delay associated with transmissions.

Furthermore, Claim 1 as amended recites:

A method for monitoring electronic commerce transactions, said method comprising the computer-implemented steps of:

determining network transport latency;  
determining application test latency, wherein said application test is selected to represent a portion of said electronic commerce transactions; and  
indicating said network transport latency and said application test latency on a display

The claims do not provide any correspondence between the determined network transport latency and the determined application latency. In other words, claims fail to provide the usefulness and/or the motivation for displaying the network transport latency and application latency.



Art Unit: 2151

Therefore the motivation to combine can simply come from a person of ordinary skilled in the art because the combined subject matter is so obvious in the relevant art, i.e. determining a network transport latency fairly known in the art.

The reasons for displaying the network transport latency can vary including informing an individual of the delay associated with the path, enabling an individual in making an informed decision, enabling an administrator in troubleshooting, etc. All these reasons and/or motivations are fairly known in the art.

For the at least reasons set forth above, applicant's arguments are considered not persuasive and the REJECTION IS MAINTAINED.

## **DETAILED ACTION**

### **Specification**

The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to adequately teach how to make and use the invention, i.e., failing to provide an enabling disclosure.

The test to be applied under the written description portion of 35 U.S.C. § 112, first paragraph, is whether the disclosure of the application as originally filed reasonably conveys to the artisan that the inventor had possession at that time of later claimed subject matter. Vas-Cat, Inc. v. Mahurkar, 935 F. 2d 1555, 1565, 19 USPQ2d 111, 1118 (Fed. Cir. 1991), reh'g denied (Fed. Cir. July 8, 1991) and reh'g, en banc, denied (Fed. Cir. July 29, 1991).

The applicants have failed to provide an enabling disclosure in the detailed description of the embodiment. The specification is objected to under 35 U.S.C. § 112, first paragraph, as failing to support the subject matter set forth in these claims.

The claims recite, "...determining application test latency, wherein said application test is selected to represent a portion of said electronic commerce transactions..."

However, the specification merely describes the process of determining network transport latency and the process of determining application latency for various components of an application (see specification, page 21 lines 4-16: applicant cited portion of the support for the amended limitation).

There is simply no teaching, suggestion or support for the amended claimed limitation. At best, the specification suggests that the tests are applied and/or the latency is determined for various components or of an application.

There is simply no teaching of the fact wherein application test is selected to represent a portion of said e-commerce transaction.

Hence, the above-amended limitation presents subject matter situations and was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

**Claim Rejections - 35 USC § 112**

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

1. Claims 1-26 are rejected under 35 U.S.C. 112, first paragraph, for the same reasons as set forth in the objected specification above.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 as amended recites:

A method for monitoring electronic commerce transactions, said method comprising the computer-implemented steps of:  
determining network transport latency;  
determining application test latency, wherein said application test is selected to represent a portion of said electronic commerce transactions; and  
indicating said network transport latency and said application test latency on a display

Claim 1 recites the limitation “said application test” in the claim. There is insufficient antecedent basis for this limitation in the claim.

For examination purposes, the limitation will be interpreted as indicated above (see response to argument [a]).

Claim 4 recites:

A method for monitoring electronic commerce transactions as recited in claim 2 wherein said method further includes:

- calculating a network transport latency unloaded baseline, said network transport latency unloaded baseline indicating the lowest calculated network transport latency during a given time period; and
- displaying said network transport latency unloaded baseline.

The phrase “unloaded” and/or “unloaded baseline” renders the claim indefinite because the phrase fails to convey clearly the intended teaching or function associated with the phrase “unloaded baseline”.

For examination purposes, the limitation will be interpreted as calculating and displaying network transport latency.

**Claim Rejections - 35 USC § 103**

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4-11, 13, 14, 16-21, 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0014464 issued to Deverill et al. (Deverill) in view of US Patent 6,578,077 issued to Rakoshitz et al. (Rakoshitz)

As per claim 1, 13, 20, Deverill teaches a computer system comprising:

a bus (Figs.1-9; shows computer systems, it is implicit that there is a bus because a bus is an essential element in order for a computer to operate);

a processor coupled to said bus (Figs.1-9; shows computer systems, it is implicit that there is a processor coupled to a bus because a processor coupled to a bus is an essential element in order for a computer to operate); and

a memory unit coupled to said bus, said processor for executing a method for monitoring electronic commerce transactions (Figs.1-9; shows computer systems, it is implicit that there is a memory unit coupled to a bus for executing an operation because a memory unit coupled to a bus is an essential element in order for a computer to operate), said method comprising the steps of:

determining application test latency for a select, granular subset of tasks associated with said electronic commerce transaction (Abstract, paragraph 0014; Deverill teaches that individual

Art Unit: 2151

tasks can be tagged and time and can be evaluated to produce desired latency and/or summary data ); and indicating said application test latency on a display (Fig.7; shows latency).

Deverill however does not teach determining network transport latency; and indicating said network transport latency on a display.

Rakoshitz teaches network transport latency (Figs. 1-15, col.5, lines 3-15); and indicating said network transport latency on a display (Figs. 1-15, col.5, lines 3-15).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Deverill to include network transport latency as taught by Rakoshitz in order to determine the delay of packet from a source to a destination (Rakoshitz, col.5, lines 3-15).

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Deverill and Rakoshitz in order to provide a system to measure the latency of an application and to measure the delay of transmitting a packet (Deverill, Figs.1-9, Rakoshitz, col.5, lines 3-15).

As per claim 2, 14, 21, wherein said method for monitoring electronic commerce transactions further comprises: determining a network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time(Deverill, Fig.7; Rakoshitz Figs.1-15); and determining an application test latency baseline that indicates an average of previously determined values of application test latency for a given day and time(Fig.7; shows "Time(dd mmm yyy hh:mm:ss") ). Motivation to combine set forth in claim 1.

As per claim 4,5,16, 23, wherein said method for monitoring electronic commerce transactions further comprises: calculating a network transport latency unloaded baseline, said network transport latency unloaded baseline indicating the lowest calculated network transport latency during a given time period (Rakoshitz, Fig.13; shows “Min”); and displaying said network transport latency, said network transport latency baseline and said network transport latency unloaded baseline on the same graph (Rakoshitz, Fig.13). Motivation to combine set forth in claim 1.

As per claim 6,7,17,24, wherein said method for monitoring electronic commerce transactions further comprises: calculating an application test latency unloaded baseline, said application test latency unloaded baseline indicating the lowest calculated application test latency during a given time period (Rakoshitz, Fig.13); and displaying said application test latency, said application test latency baseline and said application test latency unloaded baseline on the same graph (Rakoshitz, Fig.13)

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Deverill to calculate unloaded baseline indicating the lowest calculated latency as taught by Rakoshitz to include calculating application test latency instead of transport latency in order to determine the minimal latency.

On ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Deverill and Rakoshitz in order to provide a system to calculate different types of latency.

As per claims 8, 18, 25, wherein application component latency is determined for each of a plurality of application components and wherein said application component latency for each

Art Unit: 2151

of said plurality of application components can be displayed (Deverill, paragraph 038-0079; teaches The front office and back office latency for ref #1 and ref #2).

As per claims 9, 10, 11, 19, 26, Deverill discloses an application component latency baseline and an application component latency unloaded baseline are determined wherein for each of a plurality of application components and wherein a graph can be generated for each of said plurality of application components that includes said application component latency, said application component latency baseline and said application component latency unloaded baseline (Deverill, Fig. 7; Rakoshitz Figs. 1-15; Deverill in view of Rakoshitz teaches determining a network transport latency baseline that indicates an average of previously determined values of network transport latency for a given day and time and graphing the baseline).

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Deverill in view of Rakoshitz of determining network transport latency to determine application component latency in order to calculate latency for different components in a system.

One ordinary skill in the art at the time of the invention would have been motivated to modify the teachings of Deverill and Rakoshitz to provide a system where one can calculate different latency for different types of applications.



4. Claims 3, 12, 15, 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Publication 2003/0014464 issued to Deverill et al. (Deverill) in view of US Patent 6,578,077 issued to Rakoshitz et al. (Rakoshitz) in further view of Office Notice.

As per claim 3, 15, 22, Deverill in view of Rakoshitz teaches wherein said method for monitoring electronic commerce transactions further comprises:

determined network transport latency from previously determined values of network transport latency for a given day and time (Rakoshitz, Figs.1-19); determined application test latency from previously determined values of said application test latency for a given day and time(Deverill, Figs.1-9); and wherein said step of indicating said network transport latency and said application test latency further includes displaying said network transport latency and displaying of said application test latency(Rakoshitz, Figs.1-19, Deverill, Figs.1-9).

Deverill in view of Rakoshitz however does not teach determining deviation. Office Notice is taken. It is obvious to one ordinary skill in the art at the time of the invention to calculate deviation of information to in order to determine the absolute difference between one number in a set and the mean of the set for the data.

One ordinary skill in the art at the time of the invention would combine the teachings of Deverill, Rakoshitz, and calculate deviation for data to provide a system to compare different types of data.

Deverill in view of Rakoshitz does not explicitly teach as per claim 12, wherein said application components include a login component, an order component, a configure component and a help component.

Office Notice is taken; it is obvious to one ordinary skill in the art at the time of the invention to use a login component, an order component, a configure component and a help component because these components are common components in e-commerce environment.

Therefore it would have been obvious to one ordinary skill in the art at the time of the invention to modify the teachings of Deverill in view of Rakoshitz to explicitly use a login component, an order component, a configure component and a help component in order to determine different latency for different components in a system.

One ordinary skill in the art at the time of the invention would have been motivated to combine the teachings of Deverill, Rakoshitz, and different types of components to provide a system to measure the latency of many application components.

#### **Additional References**

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- Boker, US 2003/0074606 A1: Network-based control center for conducting performance tests of server systems (see fig. 7).

**Conclusion**

In order to expedite the prosecution in this application, applicant is advised to consider the followings:

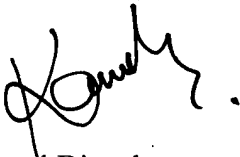
- Amend the claims to distinguish between the application test and application test latency.
- Amend the claims to include the usefulness of the claimed invention. In other words, monitoring the e-commerce application is well known in the art as evident by the cited prior art. The motivation for monitoring the e-commerce application is that it would identify the performance trends of an application (see Deverill, page 3 [0017]). By amending the claim to include the usefulness of the invention may better distinguish the invention disclosed in the present application over the prior art of the record.
- Clearly define the term “unloaded baseline” and the term baseline in the claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KAMAL B. DIVECHA whose telephone number is 571-272-5863. The examiner can normally be reached on Increased Flex Work Schedule.

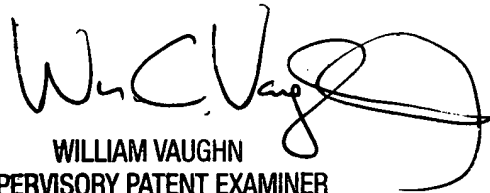
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3939. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2151

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Kamal Divecha  
Art Unit 2151  
October 13, 2006.



WILLIAM VAUGHN  
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